

09/824,035
DOCKET NO. WN-2316

15

REMARKS

Claims 1-10, 12, and 14-23 are all the claims presently pending in the application.

Claims 1, 12, 14-17, and 22 are amended to more clearly define the invention and claims 11, 13, and 24-25 are canceled. Claims 1, 12, 14-17, and 22 are independent.

These amendments are made only to more particularly point out the invention for the Examiner and not for narrowing the scope of the claims or for any reason related to a statutory requirement for patentability.

Applicant also notes that, notwithstanding any claim amendments herein or later during prosecution, Applicant's intent is to encompass equivalents of all claim elements.

Entry of this §1.116 Amendment is proper. Since the Amendments above narrow the issues for appeal and since such features and their distinctions over the prior art of record were discussed earlier, such amendments do not raise a new issue requiring a further search and/or consideration by the Examiner. As such, entry of this Amendment is believed proper and Applicant earnestly solicits entry. No new matter has been added.

Claims 1, 12, 14-15, and 17-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Rabowsky reference in view of the Hershey reference.

This rejection is respectfully traversed in the following discussion.

I. THE CLAIMED INVENTION

An exemplary embodiment of the claimed invention, as defined by, for example, independent claim 1, is directed to a digital content reproducing system that includes a movie company terminal which stores and manages a digital content of movies, a content delivery terminal in communication with the movie company terminal via a network, and a projecting

09/824,035
DOCKET NO. WN-2316

16

system which is connected to the content delivery terminal via the network, receives the digital content from the content delivery terminal via the network, and reproduces the digital content to show a movie. The projecting system includes a reproducing device, and a backup reproducing device that decodes signals while the reproducing device periodically sends a first predetermined signal to the backup reproducing device.

Conventional systems that reproduce and deliver content are film based. These systems are expensive because the film is expensive to produce, copy, distribute, and store. Further, film tends to degrade over time and may become damaged, thereby introducing errors into the content that is stored on the film.

In stark contrast, the present invention provides a digital content reproducing system that includes a reproducing device, and a backup reproducing device that decodes signals while the reproducing device periodically sends a first predetermined signal to the backup reproducing device.

In this manner, the present invention increases the reliability of all aspects of the content production, delivery and presentation. The present invention also makes it easier to deal with the content and does not subject the content to the risk of degradation and/or damage. (Page 2, lines 3-8).

II. THE 35 U.S.C. § 101 REJECTION

The Examiner alleges that claim 16 "is directed to non-statutory subject matter. The signal structure is a non-functional data structure and as such is nonstatutory."

Contrary to the Examiner's allegations, claim 16 recites subject matter which is neither: 1) a data structure; nor 2) non-functional.

09/824,035
DOCKET NO. WN-2316

17

Claim 16 recites a "computer data signal embodied in a carrier wave and representing a sequence of instructions which, when executed by a processor, cause the processor to perform a method of reproducing digital content."

Clearly, claim 16 does not recite any data structure at all. Rather, claim 16 is directed to a computer program (computer data signal . . .representing a sequence of instructions). Therefore, the Examiner is clearly mistaken in the allegation that claim 16 recites a "signal structure [that] is a . . data structure."

Secondly, claim 16 clearly recites functional descriptive material.

"functional descriptive material' consists of data structures and computer programs which impart functionality when employed as a computer component." (M.P.E.P. § 2106 IV.B.1)

Thus, claim 16 clearly recites functional descriptive material.

Further, the functional descriptive material that is recited by claim 16 is very clearly statutory.

"In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and it thus, statutory." (M.P.E.P. § 2106 IV.B1,(a))

Claim 16 very clearly recites structural and functional relationships which permit the functionality to be realized. For example, claim 16 recites a computer data signal embodied in a carrier wave that causes a processor to perform a method of reproducing digital content. The functionality in this particular example is the function of reproducing digital content, which includes receiving a digital content of a movie, decoding the digital content, processing

09/824,035
DOCKET NO. WN-2316

18

the decoded digital content, supplying signals to reproduce the movie, etc.

Lastly, for the Examiner's convenience, Applicant attaches portions of examiner training materials published by the United States Patent and Trademark Office which provides examples of how to apply the examination guidelines for computer-related inventions. In particular, Applicant draws the Examiner's attention to exemplary claim 13 which recites "A computer data signal embodied in a carrier wave." A form of claim for which the United States Patent and Trademark office has specifically indicated "is a statutory article of manufacture claim."

Therefore, contrary to the Examiner's allegation claim 16 recites statutory subject matter and the Examiner is respectfully requested to withdraw this rejection.

III. THE PRIOR ART REJECTIONS

A. The Rabowsky reference in view of the Hershey reference

Regarding the rejection of claims 1, 12, 14-15, and 17-25, the Examiner alleges that the Hershey reference would have been combined with the Rabowsky reference to form the claimed invention. Applicant submits, however, that these references would not have been combined and even if combined, the combination would not teach or suggest each and every element of the claimed invention.

None of the applied references teaches or suggests the features of the claimed invention including a movie company terminal which stores and manages a digital content of movies, a content delivery terminal in communication with the movie company terminal via a network, and a projecting system which is connected to the content delivery terminal via the network. Where the backup reproducing device that decodes signals while the reproducing

09/824,035
DOCKET NO. WN-2316

19

device periodically sends a first predetermined signal to the backup reproducing device. As explained above, these features are important for increasing the reliability of all aspects of the content production, delivery and presentation and for making it easier to deal with the content without subjecting the content to the risk of degradation and/or damage.

In stark contrast to the claimed invention, the Rabowsky reference merely discloses a headend in Figure 1 (movie company terminal) and a theater in Figure 2 (projecting system). The Rabowsky reference clearly does not teach or suggest a content delivery terminal in communication with the movie company terminal and the projecting system.

The Hershey reference does not remedy the deficiencies of the Rabowsky reference. Indeed, as explained before, the Hershey reference does not teach or suggest anything at all that is even remotely related to a system and method for reproducing and delivering digital content of a movie. Therefore, the Hershey reference clearly does not teach or suggest a movie company terminal which stores and manages a digital content of movies, a content delivery terminal in communication with the movie company terminal via a network, and a projecting system which is connected to the content delivery terminal via the network.

Even assuming arguendo that one of these applied references taught or suggested these features, Applicant submits that these references would not have been combined as alleged by the Examiner. Indeed, the references are directed to completely different matters and problems.

Specifically, the Rabowsky reference is concerned with the problems of secure delivery of motion pictures (col. 1, lines 11 - 45).

In stark contrast, the Hershey reference is concerned with the completely different and unrelated problem of the delay inherent in the execution of programmed instructions for

09/824,035
DOCKET NO. WN-2316

20

monitoring and switching over in a hot-standby configuration. (Col. 2, lines 46 - 56).

One of ordinary skill in the art who was concerned with the secure delivery of motion pictures as the Rabowsky reference is concerned would not have referred to the Hershey reference, and vice-versa, because the Hershey reference is concerned only with the completely different and unrelated problem of the delay inherent in the execution of programmed instructions for monitoring and switching over in a hot-standby configuration. Thus, the references would not have been combined.

Therefore, the Examiner is respectfully requested to withdraw the rejection of claims 1, 12, 14-15, and 17-25.

B. The Rabowsky reference in view of the Hershey reference and in further view of the Takamori reference

Regarding the rejection of claims 2 - 10, the Examiner alleges that the Hershey reference would have been combined with the Rabowsky reference and further alleges that the Takamori reference would have been combined with the Hershey reference and the Rabowsky reference to form the claimed invention. Applicant submits, however, that these references would not have been combined and even if combined, the combination would not teach or suggest each and every element of the claimed invention.

None of the applied references teaches or suggests the features of the claimed invention including a movie company terminal which stores and manages a digital content of movies, a content delivery terminal in communication with the movie company terminal via a network, and a projecting system which is connected to the content delivery terminal via the network. Where the backup reproducing device that decodes signals while the reproducing

09/824,035
DOCKET NO. WN-2316

21

device periodically sends a first predetermined signal to the backup reproducing device. As explained above, these features are important for increasing the reliability of all aspects of the content production, delivery and presentation and for making it easier to deal with the content without subjecting the content to the risk of degradation and/or damage.

As explained above, neither of the Rabowsky reference nor the Hershey reference teach or suggests these features.

The Takamori reference does not remedy the deficiencies of the Rabowsky reference and the Hershey reference.

Indeed, the Takamori reference does not teach or suggest anything at all that is even remotely related to a system and method for reproducing and delivering digital content of a movie, let alone teaching or suggesting a movie company terminal which stores and manages a digital content of movies, a content delivery terminal in communication with the movie company terminal via a network, and a projecting system which is connected to the content delivery terminal via the network.

Clearly, the Takamori reference does not remedy the deficiencies of the Rabowsky reference and the Hershey reference.

Even assuming arguendo that one of these applied references taught or suggested these features, Applicant submits that these references would not have been combined as alleged by the Examiner. Indeed, the references are directed to completely different matters and problems.

As explained above, the Rabowsky reference is concerned with the problems of secure delivery of motion pictures (col. 1, lines 11 - 45) and the Hershey reference is concerned with the completely different and unrelated problem of the delay inherent in the execution of

09/824,035
DOCKET NO. WN-2316

22

programmed instructions for monitoring and switching over in a hot-standby configuration. (Col. 2, lines 46 - 56).

In stark contrast to the Rabowsky reference and the Hershey reference, the Takamori reference is directed to the completely different and unrelated problems of not being able to take over the sole operating unit if the backup unit should fail. (Col. 1, lines 17 - 22).

One of ordinary skill in the art who was concerned with the problems of secure delivery of motion pictures as the Rabowsky reference is concerned or who was concerned with the problem of the delay inherent in the execution of programmed instructions for monitoring and switching over in a hot-standby configuration as the Hershey reference is concerned would not have referred to the Takamori reference, and vice-versa, because the Takamori reference is concerned with the completely different problem of allowing a failed main unit to be replaced while a backup unit is operating. Thus, the references would not have been combined.

Therefore, the Examiner is respectfully requested to withdraw the rejection of claims 2-10.

C. The Rabowsky reference in view of the Hershey reference and in further view of the Morley et al. reference

Regarding the rejection of claim 11, the Examiner alleges that the Hershey reference would have been combined with the Rabowsky reference and further alleges that the Morley et al. reference would have been combined with the Hershey reference and the Rabowsky reference to form the claimed invention. Applicant submits, however, that these references would not have been combined and even if combined, the combination would not teach or

09/824,035
DOCKET NO. WN-2316

23

suggest each and every element of the claimed invention.

None of the applied references teaches or suggests the features of the claimed invention including a movie company terminal which stores and manages a digital content of movies, a content delivery terminal in communication with the movie company terminal via a network, and a projecting system which is connected to the content delivery terminal via the network. Where the backup reproducing device that decodes signals while the reproducing device periodically sends a first predetermined signal to the backup reproducing device. As explained above, these features are important for increasing the reliability of all aspects of the content production, delivery and presentation and for making it easier to deal with the content without subjecting the content to the risk of degradation and/or damage.

As explained above, neither of the Rabowsky reference nor the Hershey reference teaches or suggests these features.

The Morley et al. reference does not remedy the deficiencies of the Rabowsky reference and the Hershey reference.

Rather, the Morley et al. reference merely discloses a central facility 102 (movie company terminal) in communication with a theater subsystem 104 (projecting system). The Morley et al. reference very clearly does not teach or suggest a content delivery terminal in communication with the central facility.

Clearly, the Morley et al. reference does not remedy the deficiencies of the Rabowsky reference and the Hershey reference.

Even assuming arguendo that one of these applied references taught or suggested these features, Applicant submits that these references would not have been combined as alleged by the Examiner. Indeed, the references are directed to completely different matters

09/824,035
DOCKET NO. WN-2316

24

and problems.

As explained above, the Rabowsky reference is concerned with the problems of secure delivery of motion pictures (col. 1, lines 11 - 45) and the Hershey reference is concerned with the completely different and unrelated problem of the delay inherent in the execution of programmed instructions for monitoring and switching over in a hot-standby configuration. (Col. 2, lines 46 - 56).

In stark contrast to the Rabowsky reference and the Hershey reference, the Morley et al. reference is directed to the completely different and unrelated problems of encoding, encryption, storage, and management of digital image and audio programming [0017].

One of ordinary skill in the art who was concerned with the problems of secure delivery of motion pictures as the Rabowsky reference is concerned or who was concerned with the problem of the delay inherent in the execution of programmed instructions for monitoring and switching over in a hot-standby configuration as the Hershey reference is concerned would not have referred to the Morley et al. reference, and vice-versa, because the Morley et al. reference is concerned with the completely different problems of encoding, encryption, storage, and management of digital image and audio programming. Thus, the references would not have been combined.

Therefore, the Examiner is respectfully requested to withdraw the rejection of claim 11.

III. FORMAL MATTERS AND CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully submits that claims 1-10, 12, and 14-23, all the claims presently pending in the Application, are patentably

09/824,035
DOCKET NO. WN-2316

25

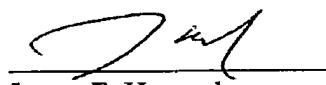
respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the Application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Attorney's Deposit Account No. 50-0481.

Respectfully Submitted,

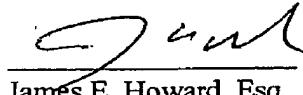
Date: 9/7/05


James E. Howard
Registration No. 39,715

**MCGINN INTELLECTUAL PROPERTY
LAW GROUP, PLLC**
8321 Old Courthouse Road, Suite 200
Vienna, Virginia 22182-3817
(703) 761-4100
Customer No. 21254

CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that I am filing this Amendment Under 37 CFR §1.116 by facsimile with the United States Patent and Trademark Office to Examiner Jamieson W. Fish, Group Art Unit 2617 at fax number (571) 273-8300 this 7th day of September, 2005.


James E. Howard, Esq.
Registration No. 39,715